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**AMENDED AND RESTATED
SETTLEMENT AGREEMENT**

THIS AMENDED AND RESTATED SETTLEMENT AGREEMENT, (Restated Settlement Agreement) is made as of this 25 day of February, 2008; (the effective date) by and between the City of Lafayette, a California Municipal Corporation (Lafayette) and Lafayette Residential Partners, LLC, a Delaware Limited Liability Company (LRP).

RECITALS

- A. Lafayette and Lafayette Town Center Associates, a California Limited Partnership entered into that certain Development Agreement dated June 1, 1998 effective as of May 27, 1998, recorded as Document Number 98-0153218-00 (Development Agreement).
- B. The Development Agreement provides for the development of certain property in Lafayette as a mixed-use development comprised of three phased components, retail, apartment, and office. (Project)
- C. Section 7.06 permits the Developer to assign an interest in the Project subject to the Development Agreement upon receiving City consent unless the transfer is expressly exempt.
- D. Lafayette Town Center Associates, after providing notice to Lafayette, transferred its interest in the apartment and office components to Bay Glen as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.
- E. Bay Glen, after providing notice to Lafayette, transferred its interest in the office component to LRP as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.
- F. Lafayette, Christopoulos Properties, and C & H Development Co., as Successors in Interest to Lafayette Town Center Associates, entered into an Assumption Agreement dated September 17, 1998, whereby Lafayette consented to the transfer of the retail parcel and Christopoulos Properties and C & H Development Co assumed all of the duties and obligations of Lafayette Town Center Associates as those obligations relate to the retail parcel.
- G. Christopoulos Properties and C & H Development Co., after providing notice to Lafayette, transferred their interest in the retail component to Christopoulos as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.
- H. The Development Agreement was originally to have expired within seven years after its effective date. On or about September 13, 2004, the parties to the Development Agreement executed a First Amendment thereto pursuant to which the term thereof was extended by one year and consent to the transfer of the retail parcel to Christopoulos was confirmed ("First Amendment"). By the date of the First Amendment, the retail component had been fully developed as well as the residential component consisting of an apartment complex owned by Bay Glen, affiliated with LRP. Only the office component remains undeveloped and it is still owned by LRP. LRP retained vehicular and pedestrian access to the real property on which the office component was and is to be constructed and concerning which the potential residential project as hereinafter described may be located. (Phase III Site)

- I. In or about January 2005, Lafayette and LRP engaged in discussions regarding the development of Phase III of the Project as a residential luxury condominium development rather than an office project. By that time, Lafayette had created a set of guidelines pursuant to which a luxury condominium project might be constructed on the Phase III Site in lieu of an office project. By that same time, LRP had negotiated a Purchase and Sale Agreement, as Seller, with KB Home South Bay, Inc., (KB) an affiliate of KB Home, as Buyer. In or about July 2005, LRP filed a request for consent to transfer its interest in the Development Agreement and the Phase III Site to KB. Lafayette denied the consent to transfer at a Council meeting held October 11, 2005.
- J. On or about January 25, 2006, Lafayette and LRP participated in a mediation of certain disputes between them arising from and related to the Development Agreement. The crux of the disputes was the City Council decision made October 11, 2005 to deny the consent to transfer the Development Agreement and Phase III Site from LRP to KB. At that mediation, it was the contention of LRP that Lafayette's denial of the consent to transfer had caused it damages of at least \$1 million. It was the contention of Lafayette that it acted in accordance with the Development Agreement to deny the consent to transfer. At the mediation, the parties reached a conceptual settlement agreement based on their mutual and reciprocal desire to settle and resolve all of the differences and disputes then existing between them.
- K. On May 22, 2006 the parties entered into a Settlement Agreement to settle and resolve disputes related to the Development Agreement.
- L. On April 9, 2007 the parties entered into a First Amendment to the Settlement Agreement to provide for LRP's release of claims and specify the City's remaining obligations.
- M. From Fall 2006 through May, 2007, LRP processed and obtained final approval for the Phase III Site office building originally contemplated under the Development Agreement. Final approval thereof was granted by Lafayette and LRP has finalized its working drawings upon which building permits for the office project might be constructed.
- N. In or about February 2007, Lafayette's City Council conducted a noticed public hearing during which a consultant retained by the City, Council Members and LRP revisited the potential for a residential condominium project alternative to the office project then pending. The City's consultant determined that the luxury condominium project contemplated in the Settlement Agreement lacked economic viability. Concurrently, the Council indicated that it would consider a further amendment of the Development Agreement to extend its expiration date by a further year so that Lafayette and LRP might consider a mutually acceptable residential project alternative to the approved office component for the Phase III Site. In May 2007, Lafayette extended the expiration date of the Development Agreement to and including May 27, 2008; concurrently, LRP has proposed to finalize its office project for the Phase III Site, but to defer the issuance of building permits and the commencement of construction for such project pending this Restated Settlement Agreement and the resulting process for consideration of an economically viable residential alternative.
- O. By this Amended and Restated Settlement Agreement, subject to ratification by Lafayette's City Council and to the Amendment of the Development Agreement as well as such other and related agreements, ordinances, and general and/or

specific plan(s) as may be required to effectuate the goals of the parties as herein set forth, the parties jointly propose to proceed through the development process described below to determine whether or not development of a residential project can be an acceptable alternative to the current approved Phase III Site office project.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including, without limitation, the avoidance of the costs and risks of litigation and/or arbitration, and the mutual covenants and conditions set forth in this Restated Settlement Agreement the parties hereto hereby agree as follows:

1. **Truth of Recitals:**

The parties agree that the foregoing Recitals are true and correct and are incorporated herein by this reference.

2. **Term.**

The term of this Restated Settlement Agreement shall commence upon the Effective Date and shall remain in effect until May 27, 2010 unless terminated, modified, or extended by circumstances set forth by this Restated Settlement Agreement or by mutual consent of the Parties.

3. **Submittal of Amendment(s) of the Development Agreement:**

If and to the extent required, to give effect to this Restated Settlement Agreement, Lafayette agrees that it will accept, in good faith, for processing, review, and prompt action as reasonably possible, amendments to the Phase III Site Development Agreement to accomplish the purposes herein set forth. The parties acknowledge that the process for Amendment of the Development Agreement requires a noticed public hearing before the Planning Commission and City Council pursuant to Government Code section 68564 *et seq.* The effectiveness of this Restated Settlement Agreement shall be conditioned expressly upon the Amendment of the Development Agreement to provide to LRP the rights and benefits for which it has negotiated all as hereafter set forth, should such Amendment be required.

The parties acknowledge that the potential Amendment of the Development Agreement as well as this Restated Settlement Agreement pertain solely to Phase III of the Project. Accordingly, the Amendment of the Development Agreement shall have no bearing on the Phase I and or II Components nor shall the current owners of the parcels comprising said phases of the Project be parties to any such Amendment. Nothing herein contained, therefore, shall be deemed to alter or affect the rights, title, and/or interest of any owners or tenants of Phase I and Phase II of the Project.

4. **Amendment of Development Agreement.** LRP requests amendment(s) of the Development Agreement in the following particulars:

A. **Use.** An amendment to the Development Agreement that the permitted use of the Phase III Site office component may be either: (i) an office use as originally contemplated in the Development Agreement or (ii) a residential use in the form of a residential project as further

defined in this Section 4. The election regarding permitted use shall be made by the Developer of the Phase III Site; should the designated permitted use remain as office, then the terms and provisions of the Development Agreement as they existed prior to this Restated Settlement Agreement shall remain in full force and effect save and except with respect to the provisions of this Restated Settlement Agreement regarding extension of the term thereof. In the event the Developer designates the Phase III Site as a Residential Project permitted use, then all of the terms and provisions of this Restated Settlement Agreement shall apply as to that permitted use as that Phase III Site is developed by and under the terms of the Development Agreement as herein amended. The Residential Project shall be subject to Lafayette's standard approval process save and except as modified by the Development Agreement and this Restated Settlement Agreement.

B. Term. An amendment to the Development Agreement that extends the term for no more than two additional years following execution of the Settlement Agreement. The current term of the Development Agreement will expire May 27, 2008 unless extended in accordance with the terms thereof. The parties contemplate, however, that pursuit of a residential project alternative may require a further extension of the current expiration date. The purpose of such extension would be both to secure LRP's rights to proceed with its office project without having to obtain building permits and commence construction and to pursue the residential project alternative to and through project approvals. Potential preliminary approval may include the following aspects/attributes of a residential project alternative: Site plan including public spaces, uses, parking structure/solution, height, mass, and number of units.

C. Fees and Exactions. An amendment to the Development Agreement to provide that the fees payable to Lafayette as otherwise required there under shall be payable at the rate in existence at the time a project application is actually filed in the event the Developer elects to pursue the residential project alternative. (In the event the Developer elects to pursue its existing approved office project, then fees shall be payable as set forth in the Development Agreement prior to any Amendment as herein contemplated.) An amendment to the Development Agreement to include the following specific fees which may be charged by Lafayette in the event LRP determines to pursue a residential project alternative to the currently approved Phase III Site office project:

- (a) Such "art fee" as Lafayette may impose as of the date of this Restated Settlement Agreement on projects of the sort and scale of proposed residential development on the Phase III Site;
- (b) A contribution to off-site improvements earmarked for the BART pathway/project intersection in a sum not to exceed \$100,000; provided, however, any monies so paid shall in fact be allocated to and expended for such purpose in accordance with plans and specifications reasonably approved by LRP. Additionally, the City shall make good faith application for grant monies with which to complete the subject off-site improvements and any monies obtained in such fashion shall reduce LRP's contribution in an amount equal to five (5) percent of the total grant amount. LRP shall not receive any monies in excess of its contribution, in the event five (5) percent of the total grant amount exceeds LRP's contribution.
- (c) A contribution in a sum not to exceed \$50,000 for a traffic signal at the intersection of Dewing and Mt. Diablo Blvd. (The amount of contribution, if any, shall be based strictly on the incremental increase of traffic, if any, generated by the proposed residential project alternative over that related to the office project.

The foregoing specific fee provisions shall have no application in the event LRP elects to construct its approved office project. The terms and provisions of Section 3.09 of the Development Agreement shall be applicable and given effect in the event a residential alternative project is undertaken save and except with respect to the specific fees set forth in this subsection.

Any and all fees payable in accordance with this paragraph shall be paid concurrently with the issuance of building permits.

D. Applicable Laws. An amendment to the Development Agreement to provide that, in the event the Developer pursues the residential project alternative, Lafayette's building ordinances in existence as of the Effective Date of this Restated Settlement Agreement shall be applicable. The parties acknowledge that a Specific Plan Amendment to the BART Block Specific Plan shall be required to develop a residential project alternative. LRP shall file an application for amendment of the BART Block Specific Plan and Lafayette shall thereafter process the same as necessary to accommodate the planned residential development so long as the potential preliminary approval of said project is indicated following the joint meeting of the Council and subsidiary commissions all as set forth hereafter. The amendment of the Specific Plan shall be with respect to permissible building height. In no case shall the height of the buildings exceed the height of the existing Town Center buildings. (For purposes of this paragraph, the height limitation imposed by the existing Phase II project shall be determined by project height above sea level rather than existing grade.) Save and except with respect to the BART Block Specific Plan Amendment and the provisions of this Restated Settlement Agreement, the applicable laws in effect at the time of execution of the Development Agreement shall apply to the project alternative residential development.

E. Affordable Housing Requirements. An amendment to the Development Agreement to provide the following affordable housing requirements shall be imposed as to the residential project alternative. LRP may provide affordable housing either on site or off site. California Redevelopment Law imposes a 15% affordable housing requirement of which 6% of units are to be allocated for very low income households and 9% of units allocated to low or moderate income households. (The aforesaid state law also imposes certain requirements regarding affordable units for qualified households at very low income, low or moderate income for not less than 55 years for rental units and 45 years for owner-occupied units.) The Developer may elect to meet affordable housing requirements through the provision of off-site units and, in such case, the requirement shall be 15% of the aggregate number of units constructed as required by California Redevelopment Law with 6% thereof allocated to very low and 9% to moderate income units. The election to provide affordable housing either on site or off site shall be that of the Developer with requirements imposed on said election to be made as herein set forth. (Affordable units shall be provided in configurations of one bedroom or two-bedroom units in the same proportion as market rate units comprising the Project.)

Should LRP propose to provide affordable housing on site, requirements related to the number and type of affordable units shall be calculated in a fashion which includes the affordable housing units presently in place at the Phase II Residential Rental Project.

The Phase II Project currently has in place 15 very low income units. That allocation of affordable units exceeds the requirement for very low income households by 10 units and exceeds the overall affordability requirement by 3 units. If it is assumed that Phase III will

consist of 75 units, then the aggregate affordable unit requirement for Phases II and III (comprising 150 units) would be 23. Since the very low income household unit requirement for Phase II already exceeds the entire very low income requirement for Phases II and III together, there shall be no requirement for additional very low income household units. In order to satisfy affordability requirements based on a combined 150 unit count between Phases II and III, the remaining shortfall in affordable units (8) shall be constructed as a part of Phase III and shall be allocated to moderate income households. (The foregoing calculation is illustrative only as the number of units comprising the Phase III alternative has yet to be determined. Therefore, affordability requirements shall be calculated with respect the aggregate number of units comprising both Phases II and III with credit given for excess Phase II units against requirements otherwise applicable to Phase III.)

In the event LRP elects to provide affordable housing off site, then the 15% affordable housing requirement of California Redevelopment Law shall apply and the Developer shall provide 6% of the units for very low income households and 9% of the units for low or moderate income households.) (By way of example, should the project be composed of 80 units, affordable housing requirements shall be satisfied by means of a credit of four (4) very low units; the provision of four (4) very low units and the provision of four (4) moderate for a total of eight (8) new affordable units.)

The terms "very low income households" "low" and "moderate income" shall have the same meanings as set forth in California Health Safety Code and Section 50052.5 as that section may be amended from time to time and shall provide an allowance for utilities and maintenance costs established by the State of California Department of House and Community Development, plus the actual homeowners association fees, dues and assessments as established from time to time. "Area median income" as referenced in California Health and Safety Code Section 50052.5 shall mean the area median income for Contra Costa County, California, as permissibly adjusted for family size appropriate for the unit by the State of California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the US Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and California Health and Safety Code Section 50093.

F. Attributes of a Residential Project Alternative. An amendment to the Development Agreement to include the following conceptual summary of the attributes of a residential project the parties jointly find to be an acceptable use:

- a. The architectural firm Heller-Manus has previously conducted conceptual studies of the Phase III project site for development of a residential project. LRP shall retain Heller-Manus to produce plans acceptable to it intended to create an economically viable development project; provided, however, the general foot print, general elevations, general site plan and general plaza dimensions of the original Heller-Manus work product shall be retained. (The parties acknowledge that the foregoing does not directly address building height; the height limitations applicable to the project shall be as defined in Section 4D above.)
- b. There shall be no restaurant use requirement imposed by Lafayette as to the project, provided that an acceptable open space substitute (e.g., enlarged plaza, children's fountain/playground/spray ground, sculpture park) or, alternatively, a public or quasi-public interior space substitute (e.g., art gallery, chamber of commerce office, non-profit foundation) is proposed that meets City parking

requirements. In addition, there shall be no requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the development that meets City aesthetic requirements. LRP shall apply for a Land Use Permit to define the specific acceptable open space substitute or public or quasi public interior space substitute for the prior required restaurant use. The issuance of a Land Use Permit shall be a condition precedent to use of the referenced space—but not to approval of the Project itself.

- c. Exterior finishes and materials used on the buildings, the plaza, and the pedestrian pathway and the proposed landscaping shall be of the highest quality, shall respect and reflect the creek side setting of the project, and be commensurate with the single family and environmentally-sensitive quality of residential buildings in Lafayette. The City will require the extensive use of architectural features involving a variety of building materials including stone, brick, minimal use of smooth trowelled stucco, and wood for the exterior of the buildings. Other materials and finishes that are consistent with a high quality residential project may be offered by LRP as alternatives. Approval of such materials is at the discretion of the City.
- d. All matters involving non-public spaces and portions of the project and/or individual units which are not viewable from off-site shall be matters determined by LRP at its sole and exclusive discretion. (The foregoing specifically includes all interior finishes, fixtures and amenities of every kind and sort.)
- e. Parking requirements shall not exceed two spaces per unit and shall be otherwise limited to one space per bedroom. Parking requirements may be satisfied by tandem spaces and/or "lifts"; provided, however, such alternatives must be reviewed and approved by a qualified traffic engineer and the City's engineer to ensure feasibility. LRP shall provide parking as set forth above and shall also include replacement parking for any spaces lost in the retail parking lot in addition to required spaces pursuant to prior agreements (e.g. CC&Rs, Development Agreement etc).

5. **Loan Extension.**

The parties acknowledge that LRP is currently obligated to Lafayette in the principal sum of \$458,524 plus interest pursuant to the terms of a certain Promissory Note executed May 31, 2005. The aforesaid indebtedness is presently due and payable on or before May 27, 2008 (save and except as the term thereof may be affected by the Development Agreement, and/or this Restated Settlement Agreement. An amendment of the term of the Development Agreement as set forth in Section 4B above shall automatically extend the maturity date of the referenced loan. Notwithstanding the foregoing, the above referenced Promissory Note shall be immediately due and payable on the earlier of: (1) termination of the Development Agreement or (2) the date of close of escrow for the sale of the Phase III Site to a third party.

6. **Approval Process:**

From and after the execution and/or ratification of this Restated Settlement Agreement, LRP shall retain Heller-Manus Architects to produce the conceptual/schematic plans required for approval of a residential project. The aforesaid plans shall be based upon prior work product from that same firm previously reviewed by Lafayette in the context of the original Settlement

Agreement. The Heller-Manus revised work product prepared for the LRP residential project alternative shall:

Retain the general footprint, general elevations, general site plan and general plaza dimensions of the earlier proposal;

Create a housing development that is economically viable from the standpoint of LRP; and

Provide a feasible design for a naturally ventilated parking garage that meets City aesthetic requirements and that responds to the requirement to enliven the southern edge of the development all with access to or from Dewing/Mt. Diablo Blvd. Nothing herein contained shall be deemed to prohibit LRP from substituting an underground parking garage structure in the place and instead of a proposed naturally ventilated parking garage as described herein above.

As soon as such Heller-Manus plans are available and have been delivered to Lafayette, a joint meeting of the City Council, Planning Commission, and Design Review Commission shall be scheduled. The said joint meeting shall occur within 30 days of delivery of all plans and submittals required by the City. The plans shall be schematic and may include cut sheets to provide information regarding architectural details. The plans shall include elevations, site plan, a conceptual landscape plan, parking and circulation, proposed lighting, paving, furniture, art, colors and a materials board related to the building. At its joint workshop meeting, Lafayette shall make preliminary comments regarding the potential preliminary approval or disapproval of the Project utilizing such procedures for recording comments of each body. (Project Preliminary Comments).

If the Project Preliminary Comments indicate potential approval of the project, then Lafayette staff will produce submittal requirements for consideration by the Design Review Commission (DRC), Planning Commission and City Council. Submittal requirement shall include all CEQA compliance requirements; provided, however, the prior EIR Studies and Addenda shall be considered (including those related to an earlier proposed apartment project for the Phase III Site). Otherwise, submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments from Council Members and Commissioners.

Within 30 days of the date on which the LRP Application shall be deemed to have been complete and the appropriate CEQA analysis shall have been completed, the DRC shall consider the plans from the joint meeting and Project submittal requirement at a hearing. The scope of DRC review shall be to recommend approval, conditional approval, or rejection of the plans and submittals furnished by LRP. The DRC action shall be completed within 45 days of the first DRC meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the Application, including anything necessary for CEQA compliance.

The DRC's recommendation shall be forwarded to the Planning Commission as soon as possible, but no later than 30 days following DRC action. The Planning Commission shall take action on the LRP Application within 45 days of the first Planning Commission meeting on the Project, unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance.

The Planning Commission's recommendation shall be forwarded to the City Council as soon as possible. The City Council's action must be completed within 45 days of the first City Council meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance. Such review shall include a CEQA determination and action on the Tentative Subdivision Map.

The parties acknowledge that the City may consider fees or exactions in addition to those listed in Section 4(C), revised plans, or other measures not specified in this Agreement that are designed to mitigate an environmental impact, as determined by the CEQA process, and those measures shall not be considered to violate this Agreement. The parties acknowledge that CEQA may require that an addendum or other environmental review be prepared to address potential environmental impacts created by a Residential Project Alternative. It is acknowledged that LRP previously submitted an application for a Phase III Residential Project and that CEQA studies related thereto, as amended or supplemented, shall be reviewed and an addendum updating traffic and visual impacts may be used in the CEQA analysis of the Phase III Residential Project Alternative.

If final Project approval of the Phase III Residential Project Alternative is granted, and if LRP elects to pursue that Project, then the fees and exactions set forth in 4C above shall be paid as therein set forth.

7. Elections Available to LRP:

Notwithstanding anything to the contrary herein contained, LRP may elect to build its approved office development at the Phase III Site, in which case the terms and provisions of the Development Agreement save and except as to the term thereof shall remain unchanged and in full force and effect. In such instance, the Restated Settlement Agreement shall have no application to the office project (although the Development Agreement shall remain in force and effect.) Additionally, LRP retains the right to designate any Assignee as the proposed Assignee of the Development Agreement, as modified by this Restated Settlement Agreement, and the proposed purchaser of the Phase III Site real property. Should LRP propose to transfer its interest in the Development Agreement and the Phase III Site, then the provisions of Section 7.06 of the Development Agreement shall be applicable to any such proposed transfer and shall remain in full force and effect. The amendment of the Development Agreement by this Restated Settlement Agreement shall be given effect so long as a residential project is proposed notwithstanding the assignment by LRP should such assignment be made.

8. Acknowledgment of Effect of Prior Settlement Agreement:

The parties acknowledge that the original Settlement Agreement dated May 22, 2006 as amended on April 9, 2007, has been given effect including, particularly, the general releases therein set forth. To the extent the Settlement Agreement has been amended and restated in this document, however, the terms and provisions hereof shall take precedence over and supersede like or other provisions found therein.

A. Release by LRP of Lafayette.

was available to each of them prior to the execution of this Restated Settlement Agreement. The parties further acknowledge that this waiver of rights under Section 1542 of the Civil Code has been separately bargained for and is an essential and material term of this Restated Settlement Agreement and that, without this waiver, the parties would not have entered into this Restated Settlement Agreement.

9. **Covenant by Parties Not to Sue.** Each party covenants and agrees that he, she or it shall not, directly or indirectly, bring, commence, initiate, institute, maintain or prosecute any action, suit or other proceeding of any kind or nature against a party to whom he or it has given a release, which is based, in whole or in part, on any claim or cause of action covered by the releases contained in this Restated Settlement Agreement that this Restated Settlement Agreement may be pleaded as a full and complete defense and bar to, and may be used as the basis for an injunction against, any action, suit or other proceedings which may be commenced initiated, instituted, prosecuted, maintained or otherwise threatened or attempted in breach or violation of the provisions of this Section. The provisions of this Section shall not apply to the breach or threatened breach of any of the covenants, agreements, duties, obligations, representations or warranties contained in this Restated Settlement Agreement.

10. **Warranties and Representations.** The parties and each of them warrant and represent that: They have authority to enter into this Restated Settlement Agreement and to amend the Development Agreement in a fashion consistent with this Restated Settlement Agreement and that neither has assigned to any third party any rights hereunder save and except as set forth in the Recitals hereto.

The parties expressly acknowledge that this Restated Settlement Agreement may only be given effect by action taken by the City Council to ratify and affirm the Restated Settlement Agreement in the fashion consistent herewith. Lafayette shall exercise its best efforts and due diligence to present this Restated Settlement Agreement and any proposed amendment to the Development Agreement which might be required to its City Council and to obtain the affirmative concurrence of its City Council to all of the terms and provisions herein set forth. This Restated Settlement Agreement shall be ratified by the City Council as soon as possible.

11. **Indemnification.** LRP shall defend, indemnify and hold Lafayette, its officials, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, judgments, awards, decrees, costs, expenses, liability, loss, damages or injuries, in law or equity, in any manner arising out of or in connection with the proposed amendment(s) to the Development Agreement and vehicular and pedestrian access to the property as described in greater detail in Recital H of this Restated Settlement Agreement, including, without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. LRP shall defend (using one attorney, to be reasonably approved by the City), at LRP's own costs, expenses and risk, any and all aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Lafayette, its officials, officers, employees, agents or volunteers. LRP shall pay and satisfy any judgment, award or decree that may be rendered against Lafayette or its officials, officers employees, agent or volunteers, in any such suit, action or other legal proceeding. LRP shall reimburse Lafayette and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. This indemnification shall survive the expiration of this Restated Settlement Agreement.

12. **Covenant of Further Assurances.** Each party agrees to execute such other documents and perform such other acts as may be necessary or desirable in order to carry out the purposes of this Restated Settlement Agreement.

13. **Representation By Counsel.** Each party acknowledges that he, she or it has had the opportunity to seek advice of independent legal counsel in connection with this Restated Settlement Agreement and that he, she or it each understands the meaning of every term of this Restated Settlement Agreement and the consequences of signing this Restated Settlement Agreement.

14. **Agreement Entered Into With Independent Judgment.** Each party acknowledges that he, she or it has had the opportunity to seek advice of independent legal counsel in connection with this Restated Settlement Agreement and that he, she or it understands the meaning of every term of this Restated Settlement Agreement and the consequences of signing this Restated Settlement Agreement. Each party further declares and represents that he, she or it have reviewed this Restated Settlement Agreement in its entirety and that, in entering into this Restated Settlement Agreement, he, she or it relied wholly on his, her or its own respective judgment, belief, knowledge, investigation, independent legal advice and research and that he, she or it has not been influenced to any extent whatsoever in making this Restated Settlement Agreement by any representations or statements regarding the same by any other party or by any person or persons representing or acting for any other party.

15. **No Admission of Liability:** Neither the negotiation nor the execution nor the performance of this Restated Settlement Agreement by any party shall constitute an admission or concession of liability or wrongdoing by any party nor any other form of admission with respect to any matter or dispute whatsoever and any such liability or wrongdoing is expressly denied.

16. **Attorneys' Fees and Costs.** The parties agree to each bear their own attorneys' fees and costs in connection with the Action and this Restated Settlement Agreement. The parties further agree that the prevailing party in any action or proceeding to enforce or interpret this Restated Settlement Agreement shall be entitled to recover from the other parties its actual attorneys' fees and costs in connection with that action or proceeding.

17. **Entire Agreement.** This Restated Settlement Agreement constitutes the entire agreement between the parties concerning the matters set forth in this Recitals except as otherwise set forth herein, supersedes all prior or contemporaneous agreements, understandings, and proposals. This Restated Settlement Agreement may be modified only by a written instrument executed by both parties.

18. **Counterparts.** This Restated Settlement Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

19. **Governing Law.** This Restated Settlement Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties each have executed this Restated Settlement Agreement as of the day and year first above set forth.

LAFAYETTE RESIDENTIAL PARTNERS,
LLC, a Delaware Limited Liability Company

By: *Jim Gower, Member*

By: *Richard Dickman, Member*

CITY OF LAFAYETTE, A CALIFORNIA
MUNICIPAL CORPORATION

By: *al*

Mike Anderson, Mayor

BART BLOCK SPECIFIC PLAN

DEVELOPMENT STRATEGY AND IMAGE

The City's General Plan recognizes the BART Block (bounded by Mt. Diablo Blvd., Happy Valley Rd., Freeway and Oak Hill Rd.) as a focal point of the downtown retail commercial area. The Block should be developed in a manner to strengthen this recognition of retail shopping orientation, bolstered by office and residential uses. The location of the BART station dictates also that it is a place oriented to transportation; the pedestrian connection between our community and other communities along the BART system. It is also the transfer point between automobiles and bus service to BART, where travelers are dropped off or picked up or transfer from one form of public transit to another form. In this regard it should be seen as a busy, exciting place with a lot of activity for shoppers, workers, commuters and sightseers. The Block should become a hub of well planned activities to reflect the vitality of business, recreation, and community. At commute hours travelers may linger in the Block partaking of various services or meet others for leisure or business. During the remainder of the day it will provide shopping opportunities, places to work, places to eat. At night the life of the Block should be sustained by nighttime uses and be used by people who live within the block and in close proximity.

Physically the Block is divided at Happy Valley Creek and So. Thompson Road. Easterly the hill area is now mostly composed of residential uses served by Terrace Way, a narrow private access easement. This area should be maintained as a residential place and renew itself as needed. As a secondary use, residential uses could migrate westerly.

The Oak Hill Road frontage offers exposure to many motorists but lacks pedestrian orientation. Parts are distant from Mt. Diablo Blvd. and the volume and speed of vehicular traffic from the freeway off ramp discourages pedestrian crossing. This area may best be oriented to special retail/service or office uses which do not depend upon pedestrian flow. Access to the residential area on the hill is essential.

Westerly of the Creek the topography is flatter, offering little problem for redevelopment. The existing buildings along the Happy Valley Road and Mt. Diablo Blvd. frontage at the west end are substantial and are not expected to be redeveloped in the short term.

The center of the Block or core, generally from So. Thompson Road westerly to the rear lines of the properties fronting Happy Valley Road, is the area of major transformation/redevelopment.

This specific plan includes the BART block Urban Design diagram attached as Exhibit A.

This document BART BLOCK SPECIFIC PLAN
is Exhibit A of City Council Res. 15-86

Adopted April 28, 1986

PROMINENT FEATURES OF THE BLOCK

BART Station: The location of the station requires strong and recognizable pedestrian connections to Mt. Diablo Blvd. The station's high elevation above the average ground level of the BART Block provides a promontory point at the southern entrance to view the hills in the background and also to provide by architectural treatment a sense of arrival to pedestrians into a plaza or corridor leading to Mt. Diablo Blvd. To provide a direct link to the creek corridor another walkway (stairs, etc.) from the BART entrance should be provided which leads easterly instead of westerly.

Happy Valley Creek: This natural amenity should be preserved and portions of it reclaimed and entirely enhanced as a primary visual corridor from the BART Station area to Mt. Diablo Blvd. Most of the parts of the creek now in culverts should be reconstructed to an attractive, landscaped condition. Pedestrian walkways should be provided along both sides with footbridges across at appropriate locations. Any vehicular crossing is discouraged and only allowable if no other practical access is available.

The western edge of the creek should be the location of a main pedestrian corridor from the BART Station to Mt. Diablo Blvd., culminating there in a plaza. The pedestrian walkway would continue across the Boulevard and into the Shield Block. The width of Mt. Diablo Blvd. would be reduced by curb realignment to provide a shorter crossing. Shops and restaurants, with outdoor seating, should be encouraged to face the creek, the view corridor and the pedestrian corridor. Upper floor uses should also provide balconies and open air opportunities along this corridor, but should be set back enough to allow open space and view space to the sky and to distant views. The pedestrian corridor could also be the terminus of other east/west corridors running through the ~~project~~ project area.

Brick Building and Eucalyptus: The major interest along the Mt. Diablo Blvd. frontage, aside from yet to be built structures, will be the Creek corridor and plaza, and the existing brick building and the monumental eucalyptus tree near it. The building is the only architecturally unique structure in the area and the original structure should be retained, reconditioned and integrated into a new project, or emphasized, with the tree, as a focal point for the entrance to a commercial complex. The building and tree could also anchor one side of a plaza, or be the center piece of a plaza.

PARKING AND VEHICULAR ACCESS

Each private development must provide adequate parking which may be located partly or wholly within a nearby shared parking structure. Surface parking lots should be minimized. However, given the propensity for shoppers to select visible, close-up parking, surface parking may be needed. A larger long term parking garage, partially underground, would be located in the west end of the block near the BART kiss/ride facility. This would also serve office and residential development and be convenient to shoppers. The City in concert with the property owners of the block should study the feasibility of a parking assessment district or other means of promoting, financing and building a centralized parking facility.

Vehicular access into the core area of the Block should be for parking or delivery purposes only. Existing access such as So. Thompson Road, will be used if possible, and new access will be minimized. Any access from Mt. Diablo Blvd. should be planned to maintain an opportunity for largely uninterrupted building or pedestrian oriented spaces along the boulevard frontage.

The definitive location of parking facilities, number of stalls, access routes and places, including the impacts and mitigations of such impacts should be determined by further study by the City and property owners in the Block. The cumulative effects on traffic and circulation in the core area should be measured through the environmental review procedure for proposed projects. The City Circulation Element has identified certain service level traffic capacities for downtown streets. Any development of the BART Block in combination with the cumulative effects of development of other downtown areas, including access, parking, traffic generation of land uses etc., should be compatible with the policies of the Circulation Element.

Provision for the all day storage and short term parking of bicycles should be made as an integral design feature of projects.

USE AND DEVELOPMENT STANDARDS

Residential Uses: The City should study and establish overlay zones or other requirements which would ~~-----~~ favor residential use. Existing residential uses should be retained.

Ground Level Uses: The ground floor should be preserved for pedestrian oriented retail sales or restaurant type uses, and where appropriate, for residential uses. However, in special circumstances such as location in the interior of the block, special permits may be granted for Administrative, Consultative, and Financial uses if they would not detract from the retail ambiance of the project.

Existing Firms: Existing retail and restaurant firms which may be displaced by redevelopment should be provided an opportunity to relocate in new development within the block.

Building Height: The presentation of building height and the architectural treatment of buildings within the retail core area along the edge of Mt. Diablo Blvd should be of small scale village character. Buildings near the street side walk and for a reasonable distance into the block should be limited to two stories so that the prevailing view from the street is of two story facades and roof areas. This specific plan includes the Building Height Relationship diagram attached and labeled Exhibit B.

Variations in height are desired, monotonous sameness of height is not acceptable.

Visibility of the ridgeline and hills south of the downtown should be maintained as viewed from Highway 24. View of the ridgeline and hills should be retained from the southern entrance to the BART station and along the creek pedestrian corridor.

A pedestrian ambiance of openness, both vertically and horizontally, should be preserved along the creek pedestrian corridor. Low buildings with gracious and varied setbacks including further recessed upper floors could provide opportunities for dining or other casual and informal activities.

Remainder of the block; subject to view, solar access requirements and the desire for height variations. The 3 story height limit will apply.

Some 3 story buildings, higher than 35 feet, of small bulk may be approved in areas where the sense of height is not present or the background or topographic circumstances mitigate the sense of height. Greater height shall be considered a ~~privilege~~ privilege and should be compensated for by provision of greater open space and provision for pedestrian oriented amenities.

OPEN SPACE AND ARCHITECTURAL CRITERIA

Open Space: Preserve, reclaim and enhance Happy Valley Creek. Uncover the creek where previously culverted, or provide significant plaza space in its place over the culverted area at a minimum width consistent with the prevailing (top of bank - top of bank) width of the open creek. Landscape

the creek and provide walkways on both sides culminating in a plaza at Mt. Diablo Blvd. frontage.

The street side plaza should emphasize and direct attention to the open creek amenities and invite pedestrians from the street into a larger plaza further into the block. at the creek edge, where shopping and eating experiences are presented.

Provide other open space plazas and pedestrian corridors and linkages for example at the Brick building and Eucalyptus tree.

Peripheral buffers on north side; provide trail on EBMUD right of way.

Additional mini-park/plaza space on east edge of creek; possibly in connection with retail/office or residential buildings.

A minimum of 20 percent of a project's area shall be retained as open space. Properties not having appropriate area for plazas or other open space (as identified by a City Master Landscape Plan, or otherwise determined by the Planning Commission) should contribute to off-site pedestrian amenities through the establishment of a landscape assessment district or some other provision.

Pedestrian: Linkage (corridor) between Bart area and Mt. Diablo Blvd. Place bold broad corridor along western edge of creek of sufficient width to allow outdoor commercial activities as well as offering the pedestrian a pleasant shopping frontage on one side and the amenities of the creek on the other.

Internal plazas and linkages. Provide connections and open places of interest in the interior of the block.

Visible accessible edge/entrance plazas along Mt. Diablo Blvd.

Setbacks:...Plazas, recesses and/or arcaded spaces that create wider sidewalk areas for cafes etc. are encouraged. On site parking located between stories and the street is discouraged.

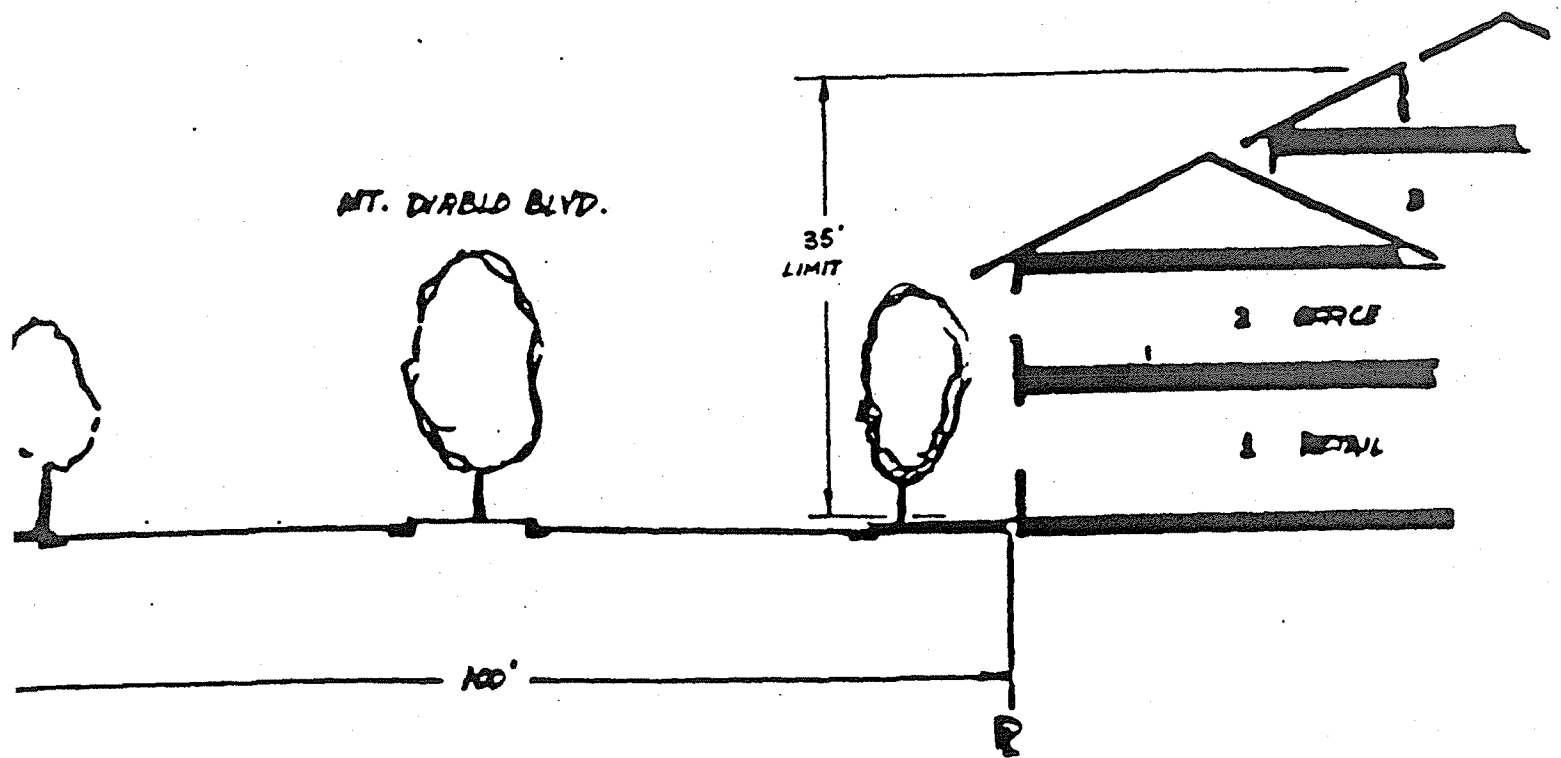
Orientation: Mt. Diablo Blvd. sidewalk should be broad and tree lined. Buildings in the interior should cluster on interior open spaces, and the creek corridor should be lined with particularly attractive shops, bookstalls and outdoor cafes and restaurants. The design features suggested along the Mt. Diablo Blvd. street edge by an adopted Master Landscape plan for Mt. Diablo Blvd. should be provided.

Character of Design: Buildings should relate well to existing buildings and natural features of the area. Buildings shall be informal in scale, and along Mt. Diablo Blvd. and the creek pedestrian corridor they should maintain the small scale village character. Building clusters with courtyards, connecting corridors, etc. should be encouraged. Where larger building forms are permitted the forms are to be broken up to lessen the impact of mass. Street level frontage store spaces and store spaces along the main pedestrian corridor should be visually penetrable with a suggested 75% of ground floor level facade glazed. Facade treatment should include varied fenestration, building planes and/or building materials.

Materials and Colors: The use of natural materials such as wood, brick and shingle are preferred. Exterior colors should be used to create a casual but distinctive quality and to help produce a harmony or coherent sense of the whole block. The use of canvas awnings and similar devices is encouraged.

Landscaping: Retention of the creekside setting will require well conceived landscape plans which are coordinated and which can provide a park-like atmosphere to the interior of the block.

Solar Access: Sunlight onto plazas and pedestrian corridors must be maintained.



BUILDING HEIGHT RELATIONSHIPS

EXHIBIT B

PART OF THE PART BLOCK SPECIFIC PLAN

